present vested interests; and the rule against perpetuities applies only to future interests: the proposition was elaborated by the court. Nor are the restraints which the association imposed on itself illegal. The equitable rights of the shareholders were fully transferable. It is true that the trustees could transfer only with the assent of three quarters of the shareholders: in the same way, a corporation by its by-laws may be able to sell property only with the consent of the majority of its stockholders; in the same way, a partnership conveyance requires the assent of all the partners; or, in an ordinary trust, the power to sell might rest in the discretion of the trustees. In an ordinary trust, where there are several *cestuis*, no one has the power to order a conveyance, — all must join. When the proviso for a three-quarters vote is considered as a restraint on alienation, the focus is all wrong; it is merely the machinery of the trust, — ordinary and useful, — a necessity of the form of joint equitable ownership, and not, in its nature, essentially different from the machinery of the corporation or partnership. The opinion of the court considers the second point, the question of restraints on alienation, most scantily, but the double aspect of the case is important. The rules against restraints and the rule against perpetuities are quite distinct branches of the law; a restraint on alienation is bad or not, without regard to how long it may continue, but there is a most common and disastrous tendency to confuse them.

COPYRIGHT IN SHORTHAND REPORTS. — The case of *Walter* v. *Lane*, 68 L. J. Ch. 736, involves a novel point of copyright law. The plaintiffs, proprietors of the London Times, brought an action to restrain the defendant from selling a book in which were printed several speeches already published in the Times. The addresses in question had been delivered by Lord Rosebery on various public occasions, and had been reproduced from shorthand notes of a reporter. The court held, reversing the decision below, that no injunction should be granted. Their view was that, while the Copyright Act did not define "author," it could not be said that a reporter was an author within the meaning of the act, and as such entitled to its protection.

The right which the act was passed to protect is the exclusive right of an author to reproduce copies of an original work. Thus its purpose is to secure to each the benefit of his own labor. The test of what labor is necessary to entitle one to this protection is found in originality, and not in the result produced. Drone, Copyright, 200. The question in the case is, then, whether the work of the reporter was sufficiently original to allow him to claim this benefit. It was shown in evidence that reporters were obliged to use judgment and skill in fitting and revising their reports for publication, and that they differed essentially in their reports of addresses. This evidence led the lower court to grant an injunction on the ground that, though the reporter could not be called the author of the speech, he was the author of the public report of the speech. And thus, in the event of several reports of the same speech, each reporter would be allowed a copyright on his own version. This was thought entirely practicable, since it was shown that, as a matter of fact, reports would differ.

The decision of the upper court in refusing the injunction, however, would seem more sound. The whole purpose of the reporter is to present an accurate report of the utterances of the speaker. It is not his

aim to make an abstract arranged on his own plan, or written in his own language. If it were, he would be entitled to the same protection as the maker of law reports. But his work consists in transcribing his notes, and in perfecting them by correction of slight errors. And in all this it is difficult to see that any great amount of originality is exercised. The fact that he has expended time and money in acquiring the ability to do this sort of work may increase the hardship of his position, but cannot of itself have great weight toward allowing him the copyright. True, copyright law has always regarded liberally the amount of labor necessary to secure its benefits, yet it seems hardly warrantable to bring this case within its scope. The reporter has, indeed, published a report which may differ from others, but it is of something which he did not create, and which required no original research or investigation on his part to prepare. On this point the court forcibly says that, though the report and the speech are different things, still the speech is the only valuable thing in the report. This argument seems convincing and the decision sound.

THE BURDEN OF PROOF OF TESTAMENTARY CAPACITY. — Until recently the law seemed well settled that the party, for whose case the existence of a will was necessary, must establish its validity. Consequently the burden of proof of the testator's testamentary capacity was conceded to be on the party propounding the will, the effect of the presumption in favor of sanity being merely to shift the duty of going forward with the evidence to the contestants, and not to change the burden of establishing. The jury were not required to say the document was the will of a competent testator when they were in doubt. *Barry* v. *Butlin*, 2 Moore, P. C. 480; 1 Greenleaf on Evidence, 152, 16th ed. Several recent cases in this country, however, take a contrary view, and hold that the burden of proof upon the whole case rests upon the contestant, and that the presumption of the sanity of the testator is of evidential value. *Sturdevant's Appeal*, 42 Atl. Rep. 70 (Conn.); *Hallenbeck* v. *Cook*, 54 N. E. Rep. 154 (Ill.). Thayer's Preliminary Treatise on Evidence, 381, clearly points out that, so far is a presumption from being evidence, it is an excuse for not giving evidence, what the Romans called *levamen probationis*. The confusion on this subject is further increased by the decision of the New York Court of Appeals in *Dobie* v. *Armstrong*, 160 N. Y. 584. While recognizing that "ordinarily the burden of proof is upon the party propounding the will," they hold that § 2653a of the New York Code of Civil Procedure, which enacts that "the decree of the surrogate admitting the will to probate shall be *prima facie* evidence of the . . . validity of such will," . . . casts the burden of establishing the incompetency of the testator on the contestant. The court appeared to consider this the only possible construction. A more obvious interpretation, perfectly consistent with the wording and spirit of the section, which avoids overruling the prevailing doctrine on this subject, would be to hold that the *prima facie* case simply shifted the burden of going forward to the contestant, but did not affect the burden on the proponent of establishing ultimately the question in issue. That latter burden never shifts. *Crowninshield* v. *Crowninshield*, 2 Gray, 524. Perhaps the court was confused by the two senses in which the term "burden of proof" is used. The decision seems particularly unfortunate, as in a former case the same